



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No: 10/611,765  
Appellant: Sokola  
Filed: July 1, 2003  
Title: DINNERWARE WITH ATTACHED FIGURE AND DIET REMINDER  
TC/A.U.: 3727  
Examiner: Stephen J. Castellano  
Confirmation No.: 2171  
Notice of Appeal Filed: April 7, 2005  
Docket No.: SOK-101US

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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S I R :

Appellant hereby appeals from the decision dated March 11, 2005 finally rejecting claims 1-5, 7, 10-13, and 16-20, and requests consideration and reversal of the Final Rejection dated December 8, 2004, rejecting all claims currently pending in this application.

**I. REAL PARTY IN INTEREST**

The real Party In Interest in this matter is the inventor, Leonard R. Sokola Sr.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences related to the subject matter of this Appeal.

**III. STATUS OF CLAIMS**

Claims 1-5, 7, 10-13, and 16-20 are the only claims pending in the application, claims 6, 8, 9, 14, 15, and 21-23 having been withdrawn. Claims 1-5, 7, 10-13, and 16-20 stand finally rejected, and all of these rejections are appealed herewith. Claim 1 is the only independent claim. Claims 2-5, 7, 10, and 16-20 each

depend directly from claim 1, and claims 11-13 each depend directly from claim 10. Hence all of claims 2-5, 7, 10-13, and 16-20 depend ultimately from claim 1.

Appellant contends that independent claim 1 is patentable over the cited prior art, and provides arguments and support for that contention in the sections provided below. Appellant further contends that dependent claims 2-5, 7, 10-13, and 16-20 are also patentable, both independently and as dependent from claim 1.

#### **IV. STATUS OF AMENDMENTS**

No amendments have been filed after final rejection. As filed on July 1, 2003, the subject application had 23 total claims. Among those claims were two independent claims, namely, claims 1 and 23. Claims 2-10 and 14-22 each depended directly from claim 1, and claims 11-13 each depended directly from claim 10, and thus all of claims 2-22 depended ultimately from claim 1.

A first Office Action, dated March 22, 2004, objected to claims 2, 9, 14, 15, 21 and 23 with the indication that "the drawings must show every feature of the invention specified in the claims." Claims 1-8 and 10-12 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 4,863,033 to Buj, and claims 9, 14, and 16 were rejected under 35 U.S.C. § 103(a) as unpatentable over the same reference. Claim 15 was rejected under 35 U.S.C. § 103(a) as unpatentable over Buj in view of U.S. Pat. No. 79,824 to Goff *et al.*, and Claims 17 and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over Buj in view of U.S. Pat. No. Des. 373,930 to Gruneisen III (Gruneisen). Claims 13 and 19-22 were rejected under 35 U.S.C. § 103(a) as unpatentable over Buj in view of U.S. Pat. No. Des. 400,403 to Brownell. Claims 1, 10, 13 and 19-23 were rejected under 35 U.S.C. § 103(a) as unpatentable over Brownell in view of Buj and Gruneisen.

Appellant filed a Response to the first Office Action on May 20, 2004. The Response amended independent claim 23 to further distinguish the claimed invention from the cited references. In the May 20 Response, Appellant also provided detailed remarks specifying the limitations in the amended claims which are

not taught, described, or suggested in the art relied on in the rejection, and explaining how and why such limitations render the claimed subject matter patentable over the cited art. Appellant also amended FIGS. 3-5 and added new FIGS. 6 and 7 in response to the Examiner's objection, and cited specific support in the application as filed for these amendments.

A second Office Action, dated July 15, 2004, required election of one of three groups of patentably distinct species of the claimed invention. These groups were:

Group I: FIG. 1 and 2;

Group II: FIG. 3; and

Group III: FIG. 4.

No mention was made in the Office Action of FIGS. 5-7.

Appellant filed a Response to the second Office Action on August 16, 2004, electing Group III: FIG. 4 without traverse, and identifying claims 1-5, 7, 10-13 and 16-20 as readable on Group III. No amendments were filed in this Response.

A third (Final) Office Action was issued on December 8, 2004. The Office Action objected to the Response of May 20 under 35 U.S.C. § 112, asserting in regard to FIGS. 3, 4, and 6 that the shape and dimensions of the bowl shown therein are new matter and that, in FIG. 5, the location of the phrase "Don't Pig Out!" on the dish is new matter. The drawings were also objected to under 37 C.F.R. § 1.83(a), with the statement that the drawings must show every feature of the invention specified in the claims. Claims 2, 9, 14, 15, 21, and 23 were objected to with the assertion that various features of these are not shown in a drawing. The Examiner required a proposed drawing correction or corrected drawings.

The Office Action finally rejected claims 1-5, 7, and 10-12 under 35 U.S.C. § 102(b) over Buj (4,863,033). It further rejected claim 16 under 35 U.S.C. § 103(a) as unpatentable over Buj and claims 17 and 18 under § 103(a) as unpatentable over Buj in view of Gruneisen. Claims 13, 19, and 20 were rejected

under 35 U.S.C. § 103(a) as unpatentable over Buj in view of Brownell. Claims 1, 10, 13, 19 and 20 were also rejected under § 103(a) as unpatentable over Brownell in view of Buj and Gruneisen.

Appellant filed a Response to the third (Final) Office Action on February 24, 2005. The Response provided further detailed remarks specifying the limitations in the amended claims which are not taught, described, or suggested in the art relied on in the rejection, and explaining how and why such limitations render the claimed subject matter patentable over the cited art. No amendments were made. The Response also detailed remarks specifying how the items alleged to be new matter were supported in the application as filed, and where the various features alleged to be missing in the Figures could be found.

An Advisory Action was issued March 11, 2005, stating that the request for reconsideration in the Response to the third Office Action had been considered but had not placed the application in condition for allowance because "Nothing in applicants remarks suggest [sic] that the shape and dimension of the bowl depicted in the drawings filed on May 24, 2004 were originally disclosed. Therefore, the examiner must conclude that this is new matter despite strenuous traversal on applicant's part." The Advisory Action was accompanied by an Interview Summary making of record a telephonic interview between the Examiner and Appellant's representative, Frank Tise, on March 21, 2005. The summary reflected the Examiner's reiteration, during the interview, that "a spoon is a pictorial representation" and that "...spoons are used to measure proper quantity [sic] of food such as by measuring the amount of sugar to put in coffee." and that therefore the spoon shown in Buj is a graphical diet reminder. No agreement was reached during the interview regarding the merits of the Examiner's arguments.

#### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

The invention is a dinnerware article adapted to receive food. The article comprises a shallow container with an upper surface having a center, and a lower surface joined to the upper surface at an edge; a raised likeness of a creature affixed to the upper surface; and a graphical diet reminder on the upper surface.

The likeness of a creature is a three-dimensional figure, for example a statuette or a raised relief figure.

The shallow container may be any commonly used dinnerware article designed for receiving food, and may for example be a saucer, a dish, a bowl, or a plate, such as a dinner, salad, or dessert plate, and may be of any width, height, and shape. (See application page 5 lines 1-6.)

The likeness may be that of any creature, but typically is of a creature that connotes obesity to remind the user of the consequences of unhealthful eating habits. (See application page 5 lines 7-11 and original FIGS. 1-5.)

The graphical diet reminder may comprise a diagram indicating a breakdown of diet according to food categories and/or may include images and/or text relating to different food categories. The food categories may be laid out according to any method of organization, for instance caloric value, fiber content, fat content, vitamin content, protein content, suggested percentages of diet, or any other criteria or combination of criteria. Thus it may be an image of a food pyramid. Instead or in addition, the graphical diet reminder may comprise numerical nutritional information, for example in chart or table format, laying out caloric value, fiber content, and/or other data such as outlined above. The graphical diet reminder may also comprise a motivational message in text or other format, an example of which is the text message "Don't Pig Out!". (See application page 5 lines 7-11 and original FIGS. 1-5.) (See application, paragraph spanning pages 5 and 6, and original FIGS. 1-5.)

It is contemplated that, by using the dinnerware article of this invention, the user will be prompted to consume a proper quantity and balance of foods. (See application, page 6 lines 7-9, and page 7, lines 11-13.)

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The following objections and rejections are on appeal.

The amendment filed May 24, 2004 is objected to under 35 U.S.C. § 132 with respect to amended FIGS. 3-5 and new FIG. 6, all of which are stated to introduce new matter which Appellant is required to cancel.

The drawings are objected to under 37 C.F.R. § 1.83(a) for not showing a bowl as recited in claim 2, and correction is required by the Examiner.

Claim 2 is objected to, due to lack of a drawing showing a bowl.

Claims 1-5, 7, and 10-12 are rejected under 35 U.S.C. § 102(b) as anticipated by Buj.

Claim 16 is rejected under 35 U.S.C. § 103(a) as unpatentable over Buj.

Claims 17 and 18 are rejected under § 103(a) as unpatentable over Buj in view of Gruneisen.

Claims 13, 19, and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Buj in view of Brownell.

Claims 1, 10, 13, 19 and 20 are rejected under § 103(a) as unpatentable over Brownell in view of Buj and Gruneisen.

## **VII. ARGUMENT**

Appellant provides below his arguments and contentions with respect to the above grounds of objection and rejection.

**A. Amended FIGS. 3-5 And New FIG. 6 Do Not Introduce New Matter Under 35 U.S.C. § 132, Because There Is Support In The Specification For All Of The Elements Shown In These Figures**

*i) FIGS. 3, 4 and 6*

The Examiner states that

"Figures 3-6 display new matter. Figures 3, 4 and 6 show a bowl, there is support for a bowl, the shape and dimensions of the bowl are new matter." (See third Office Action, page 2, third paragraph.)

Appellant notes that the shape shown is a generic representation of a bowl and that no dimensions are in fact shown in these figures. In addition it is explicitly stated in the specification that

"The figures are not to scale, and are not intended to serve as engineering drawings." (See page 3, lines 15-16.)

This statement explicitly disclaims any interpretation of the figures that assigns specific proportions or dimensions to the features shown therein. Further, even had this disclaimer not been made, it is well established that no precise proportions are to be ascribed to an element based on the drawing alone.

"Under our precedent, however, it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." *Hockerson-Halberstadt, Inc. v. Avia Group Int'l, Inc.*, 222 F.3d 951, 55 USPQ2d 1487 (Fed. Cir. 2000)

The amendments in FIGS. 3 and 4 are designed to better illustrate, in a three dimensional representation, a shallow container that has some depth such as, for example and not by way of any limitation, a bowl. Such amendment does not constitute introduction of new matter. It is stated on page 3, line 12, that

"...the same numbers indicate the same elements in all figures."

Element 12, wherever it appears, represents the same element. Element 12 is the article whose appearance has been modified by the amendment to the figures. This element is identified on page 5 as follows:

"The shallow container 12 may be any commonly used dinner article designed for receiving food, and may for example be a saucer, a dish, a bowl, or a plate..." (Emphasis added.)

The amended figures simply represents an artist's conception of a shallow container which may be a bowl, as disclosed in the specification. Appellant is permitted to amend his drawings and or add figures, provided that such amendment or additional figure is described in the specification as filed. Appellant contends that, as demonstrated by the above-cited passage, the features shown in amended FIGS. 3 and 4 are indeed described in the specification.

Newly added FIG. 6 is an elevation view of an embodiment of the shallow dish 12 shown in FIG. 5 which illustrates the disclosure on page 7 lines 8-9, which reads

"Likeness 20 extends laterally from the edge, so that part of the likeness is above upper surface 14 and part of the likeness is below lower surface 15..."

Thus, full support for the addition of FIG. 6 is provided in the specification, and FIG. 6 does not introduce new matter. Accordingly, Appellant respectfully submits that the new matter objections to FIGS. 3, 4 and 6 are improper.

*ii) FIG. 5*

It is explicitly stated in the specification on page 5 at lines 17-18 that

"...the position of diet reminder 22 can be anywhere on upper surface 14,"

FIG. 5 shows diet reminder 22 (i.e., the phrase "Don't Pig Out") in exactly such a location, i.e., on upper surface 14. Thus, there is clear support in the specification for amended FIG. 5, and no new matter has been added. Accordingly, Appellant respectfully submits that the objection is improper.



**B.      Objection To The Drawings For Not Showing  
A Bowl As Recited In Claim 2 Is Improper,  
Because A Bowl Is Shown In At Least FIGS.  
3 and 4**

Appellant contends that a bowl, indicated at 12, is clearly shown in at least FIGS. 3 and 4. As elaborated under section A. above, the specification explicitly states that element 12 may be a bowl. Further, by the Examiner's own admission,

"Figures 3, 4, and 6 show a bowl..." and "...there is support for a bowl." (See the third paragraph on page 2 of the third (Final) Office Action.)

As the Examiner notes, the drawings do in fact show a bowl. Accordingly, Appellant respectfully submits that the objection is improper.

**C.      Objection To Claim 2 For Lack Of A Drawing  
Showing A Bowl Is Improper, Because A  
Bowl Is Shown In At Least FIGS. 3 and 4**

The points made under section B. above are repeated with respect to this objection. The drawings do in fact show a bowl, and Appellant therefore respectfully submits that the objection is improper.

**D.      Rejection Of Claims 1-5, 7, And 10-12 Under  
35 U.S.C. § 102(b) Over Buj Is Improper,  
Because Buj Does Not Disclose The  
Limitation Of A Graphical Diet Reminder**

Buj does not disclose a graphical diet reminder. Buj discloses a plate on which there is mounted a removable spoon and a fork. Buj's objective is to provide toy-like implements to encourage children to eat, an objective that teaches away from the present invention.

In the May 20, 2004 response to this rejection, Appellant explained that the spoon and fork in Buj are neither graphical nor are they diet reminders, as

recited in the present claims, but actual eating implements. The American Heritage Dictionary of the English Language, New College Edition (Houghton Mifflin, 1976) defines "graphical" (alternative form of "graphic") as "of or pertaining to written or pictorial representation." Despite this definition, which comports with common usage and which reflects the meaning of "graphical" in the present application, the Examiner states that

"The spoon and fork are pictorial and represent a spoon and fork." (See third Office Action, page 5, second paragraph.)

Appellant is mystified by this assertion, since it is clear that the spoon and fork are actual working utensils and not pictorial items. Of course, the spoon and fork shown in the Buj patent document must be represented therein in pictorial format, since the patent is a printed document. However, the invention of Buj does not include a picture or other graphical image of a spoon or fork, but rather an actual spoon or fork. Buj explicitly states that

"A spoon 3, provided with a standard end having a structural concavity and size suited to its practical function, includes on an end or empty edge of its handle 4 another toy or ornamental figure identical to or complementary with the already existing figures on plate 1. In addition, a similar structure is established for the fork 6, whose prongs 6' are able to adopt any suitable shape limited such that this utensil can still perform its function and whose handle 7 ends with a toy 8." (emphasis added) (See column 2 at lines 57-66.)

Buj further explains that

"...with little effort, he or she [the user] can use the utensils as if they were the toys they represent, taking the food from the plate and bringing it to his/her mouth." (See column 3 at lines 31-33.)

Indeed, the Examiner apparently does recognize that the spoon and fork of Buj are actual working utensils, as evidenced by his statement that

"Insofar as the spoon and fork have a size and the capability to hold a specified quantity and are not capable of holding more than a certain quantity, they represent diet reminders of a similar nature as the food pyramid which is based upon serving sizes and they prompt the user to consume a proper quantity and balance of food." (See page 5, paragraph 2 of the third Office Action.)

By referring to the spoon and fork holding a specified quantity of food, the Examiner shows that he does indeed understand and accept that these are actual working utensils. However, it is self-evident that an actual spoon or fork is not a "written or pictorial representation" of itself, and thus the spoon and fork of Buj cannot be graphical. Nor are they diet reminders, and Appellant therefore contests the second clause of the passage cited immediately above. The function of a "diet reminder" in the present invention is clarified in the application as follows

"It is contemplated that, by viewing the graphical diet reminder, the user will be prompted to consume a proper quantity and balance of foods." [emphasis added] (page 6, lines 7-9)

Regardless of the specific nature of the utensils illustrated in Buj, the Examiner's argument that the size of a spoon acts as a reminder to consume a proper quantity and balance of food is nonsensical. It is universally known that the amount of food consumed depends largely upon the number of spoonfuls consumed; two individuals at the same table, using the same size spoon, may consume very different quantities of food. It defies logic to assert that the size of a spoon is a reminder to consume a proper quantity of food. Nor does the size or shape of a spoon inspire the user to consume a proper balance of foods. The Board needs no explanation to understand that a spoon is a general purpose utensil designed for use with any of a variety of foods, and the Examiner provides no support for his curious assertion that Buj's spoon and fork "prompt the user to consume a proper quantity

and balance of food.” Not unexpectedly, Buj discloses nothing that suggests directing the use of the spoon and fork to any such objective. Rather, she states that

“It is an object of the invention to provide a set of eating utensils for children which encourage them to eat the food presented to them and to develop the coordinated movements necessary for proper eating.” (emphasis added) (See Buj column 1 lines 39-42.)

If anything, this statement teaches away from the present invention by providing a method to encourage eating rather than to reduce or control it. There is no indication that the spoon and fork of Buj have, or are intended to have, the effect of serving as a diet reminder.

Appellant respectfully submits that the Buj reference does not anticipate claim 1 and any of dependent claims 2-5, 7 and 10-12.

**E.      Rejection Of Claim 16 Under 35 U.S.C. § 103(a) Over Buj Is Improper, Because Buj Does Not Disclose All Of The Limitations Of Claim 16 And No Motivation Is Given To Modify Buj To Overcome This Deficiency**

As noted immediately above in section D., Buj does not disclose all of the limitations of claim 1, from which claim 16 depends. Specifically, Buj does not disclose a graphical diet reminder. Additionally, she does not disclose a raised likeness of a pig as recited in claim 16. No other references are cited to remedy either of these deficiencies. The Examiner states that

“It would have been obvious to modify the type of creature resembled [sic] (such as a pig) as a matter of design choice and as a matter of little criticality since the application teaches a wide variety of different animals.” (See third Office action, page 4, first paragraph.)

Appellant contends that this statement is incorrect, and that the application clearly indicates a preference that the raised figure be that of a creature connoting obesity:

"Typically, likeness 20 will be of a creature that connotes obesity, to remind the user of the consequences of unhealthful eating habits. Nonlimiting examples of suitable creatures include a walrus, a hippopotamus, a whale, and an imaginary creature such as for example Jabba the Hutt™. Likeness 20 may be that of an obese person. In one preferred embodiment of the invention, likeness 20 is that of a pig." (See page 5, lines 9-14.)

There is no disclosure in Buj suggesting that the dolphin figurines shown therein might connote obesity, and thus there would be no motivation to modify the disclosure of Buj by replacing a dolphin with a pig. For this reason, and separately because Buj does not disclose or suggest a graphical diet reminder, a *prima facie* case of obviousness has not been presented. Accordingly, Appellant respectfully submits that the Buj reference does not render claim 16 obvious.

**F. Rejection Of Claims 17 And 18 Under 35  
U.S.C. § 103(a) Over Buj In View Of  
Gruneisen Is Improper, Because Buj And  
Gruneisen Together Do Not Disclose All Of  
The Limitations Of Claims 17 and 18**

*i) Claim 17*

The design patent to Gruneisen shows a tall drink container (not a shallow container, as recited in claim 17) with an item resembling a basketball mounted on the lip thereof. The likeness is not that of a creature, as recited in claim 17, but must only be a basketball, as indicated in the title of the patent, "Basketball Drink Container." Thus, there is no suggestion that the item mounted on the rim may be a raised likeness of a creature as recited in claim 17. Further, Gruneisen does not disclose or suggest a graphical diet reminder, and therefore does not

remedy this deficiency in Buj. For each of these several reasons, not all of the elements of claim 17 are provided by the combination of Buj and Gruneisen, and a *prima facie* case of obviousness has not been presented. Accordingly, Appellant respectfully submits that the combination of Buj and Gruneisen does not render claim 17 obvious.

*ii) Claim 18*

The points made under section i) above are repeated with respect to claim 18. Further, although the design patent to Gruneisen shows a hollow basketball in which the top hemisphere has been "removed for ease of illustration", there is no indication that it can be removed in fact. Rather, the equatorial line shown in each of FIGS. 1, 5 and 6 of Gruneisen appear to be permanent seams holding together the two hemispheres of the basketball, as is typical for the construction of hollow plastic articles. Therefore, there is no teaching that the basketball comprises a bottom and a removable top as recited in claim 18, and the combination of Buj and Gruneisen does not render claim 18 obvious.

**G. Rejection Of Claims 13, 19, And 20 Under §  
103(a) Over Buj In View Of Brownell Is  
Improper, Because The Combined  
References Do Not Disclose All Of The  
Limitations Of These Claims**

*i) Claim 13*

The third (Final) Office action states that Buj discloses the invention except for a graphical diet reminder on the central section (claim 13), and except for the graphical diet reminder indicating a breakdown of diet according to food categories (claim 19), and comprising an image of a food pyramid (claim 20).

The Examiner asserts that the design patent to Brownell supplies these missing elements because it

“...pictorially represents a food pyramid, the exact same diet reminder that applicant uses.” (See page 6, first full paragraph.)

Appellant contends that the design claimed by Brownell is clearly not a pictorial representation, as a cursory inspection of the Figures immediately reveals. Rather, Brownell discloses a physical object with recesses for receiving food, and there is nothing “of or pertaining to written or pictorial representation” such as would meet the “graphical” limitation. Thus, the “graphical diet reminder” limitation is not met because the “graphical” requirement is not satisfied.

Nor is there any indication in Brownell that the “compartmentalized plate” named in the invention title serves, or is intended to serve, the function of any kind of diet reminder, graphical or otherwise. Nor has the Examiner explained how it may function as such. In fact, Brownell does not suggest any particular function at all for the triangular shape, and no teaching is given as to the purpose of the individual compartments. In the absence of any specific teaching, Appellant presumes that the compartments have the conventional function of separating different foods from one another.

Appellant is perplexed by the Examiner’s comment that

“The claims [of the present invention] do not recite any limitations about different foods being placed in various compartments.” (See third Office Action, page 6, first full paragraph.)

No such limitations are needed, nor would they even be relevant, since there is neither disclosure nor any claim in the present invention regarding food compartments. The invention has nothing to do with food compartments, and it is therefore self-evident that the claims should not recite placing foods in compartments. Appellant’s mention of food compartments in responding to the Office Action was only intended to establish the fact that, even though the triangular shape of Brownell’s invention appears to comprise food compartments, there is no indication in Brownell that these are to serve as diet reminders of any sort.

*ii) Claim 19*

The points made above in *i)* with respect to claim 13 are repeated here for claim 19. Further, Brownell shows no diagram indicating a breakdown of diet according to food categories as recited in claim 19, because there is neither 1) a diagram nor 2) any teaching regarding food categories. Thus the combination of Buj and Brownell does not provide all of the claim 19 elements, and therefore fails to provide a *prima facie* case of obviousness.

*iii) Claim 20*

The points made above in *i)* and *ii)* are repeated here regarding claim 20. Further, although there is a triangular shape to the arrangement of food compartments, the compartments do not constitute a food pyramid as recited in the claim. The common meaning of "food pyramid" is

"A diagrammatic representation of human nutritional needs, such as the Food Guide Pyramid. Also called diet pyramid."  
(See The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2000 by Houghton Mifflin Company, found online at <http://dictionary.reference.com/search?q=food%20pyramid>.)

As is commonly known, the food pyramid assigns specific locations on the diagram to specific food groups, with the relative block sizes representing proper relative amounts of each for a healthy diet. Neither Buj nor Brownell suggests anything of the sort, nor in fact any element that is either graphical or a diet reminder. Thus, the combination of these references does not provide all of the elements of claim 20, and a *prima facie* case of obviousness has therefore not been presented.

**H. Rejection Of Claims 1, 10, 13, 19 And 20  
Under § 103(a) Over Brownell In View Of  
Buj And Gruneisen Is Improper, Because The**



**Combined References Do Not Disclose All Of  
The Limitations Of These Claims**

*i) Claims 1, 10 and 13*

The third Office Action states that

"Brownell discloses a dinnerware article adapted to receive food, comprising: a plate having an upper surface with a center or center section and a border section adjacent and surrounding the center section, the border section extending to the edge, an image of a food pyramid on the central section as the compartments to form a pyramid shape. Insofar as the so called pyramid of the present invention is triangular in shape, the triangular shape of the central section defines the pyramid. Brownell discloses the invention except for the removably affixed hollow statuette of a pig and removable top of the statuette. Buj teaches an animal statuette and Gruneisen teaches a hollow removable statuette with a removable top." (See third Office Action, page 5, first paragraph)

Appellant's arguments and contentions with respect to this rejection are the same as those set forth above under section G. *i)*, and will not be repeated here.

*ii) Claim 19*

Appellant's arguments and contentions with respect to this rejection are the same as those set forth above under section G. *ii)*, and will not be repeated here.

*iii) Claim 20*

Appellant's arguments and contentions with respect to this rejection are the same as those set forth above under section G. *iii)*, and will not be repeated here.

Appellant's arguments and contentions with respect to this rejection are the same as those set forth above under section G. *i*), and will not be repeated here.

*ii) Claim 19*

Appellant's arguments and contentions with respect to this rejection are the same as those set forth above under section G. *ii*), and will not be repeated here.

*iii) Claim 20*

Appellant's arguments and contentions with respect to this rejection are the same as those set forth above under section G. *iii*), and will not be repeated here.

Respectfully submitted,



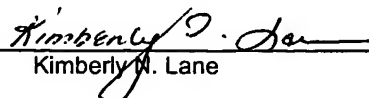
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Dated: June 6, 2005

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Kimberly M. Lane  
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SOK-101US



- 19 -

### **VIII. CLAIMS APPENDIX**

What is claimed

1. A dinnerware article adapted to receive food, the article comprising:  
  
a shallow container with an upper surface having a center, and a lower surface joined to the upper surface at an edge;  
  
a raised likeness of a creature affixed to the upper surface; and  
  
a graphical diet reminder on the upper surface.
2. The article of claim 1, wherein the shallow container comprises one of a saucer, a dish, and a bowl.
3. The article of claim 1, wherein the shallow container comprises a plate.
4. The article of claim 1, wherein the likeness is adjacent the edge.
5. The article of claim 1, wherein the likeness comprises a statuette.
7. The article of claim 1, wherein the likeness is permanently affixed to the upper surface.

10. The article of claim 1, wherein the upper surface comprises a central section and a border section adjacent and surrounding the central section, the border section extending to the edge.

11. The article of claim 10, wherein a distance from the edge to the central section is between 10% and 40% of a distance from the edge to the center.

12. The article of claim 10, wherein the likeness is affixed to the border section.

13. The article of claim 10, wherein the graphical diet reminder is on the central section.

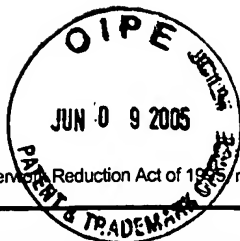
16. The article of claim 1, wherein the likeness resembles a pig.

17. The article of claim 1, wherein the likeness comprises therein a hollow space adapted to contain at least one pill.

18. The article of claim 1, wherein the likeness is hollow and comprises a bottom and a removable top, the likeness adapted to contain at least one pill.

19. The article of claim 1, wherein the graphical diet reminder comprises a diagram indicating a breakdown of diet according to food categories.

20. The article of claim 1, wherein the graphical diet reminder comprises an image of a food pyramid.



PTO/SB/21 (09-04) (AW 10/2004)

Approved for use through 7/31/2006. OMB 0651-0031

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission 24

Application Number	10/611,765
Filing Date	July 1, 2003
First Named Inventor	SOKOLA, Sr. Leonard R.
Art Unit	3727
Examiner Name	CASTELLANO, Stephen J.
Attorney Docket No.	SOK-101US

**ENCLOSURES (Check all that apply)**

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form<br><input checked="" type="checkbox"/> Fee Attached<br><br><input type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/Declaration(s)<br><br><input type="checkbox"/> Extension of Time Request<br><br><input type="checkbox"/> Express Abandonment Request<br><br><input type="checkbox"/> Information Disclosure Statement<br><br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><br><input type="checkbox"/> Response to Missing Parts/<br>Incomplete Application<br><input type="checkbox"/> Response to Missing Parts<br>under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a<br>Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation,<br>Change of Correspondence<br>Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication<br>to TC<br><input type="checkbox"/> Appeal Communication to Board<br>of Appeals and Interferences<br><input checked="" type="checkbox"/> Appeal Communication to TC<br>(Appeal Notice, Brief, Reply<br>Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please<br>identify below):<br><br>- PTO Form 2038 (Credit Card<br>Payment Form); and<br>- PTO Return Postcard. |
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**Remarks:**

The Commissioner is hereby authorized to charge any fees not covered in full or in part, or to credit any overpayment to RatnerPrestia's PTO Deposit Account No. 18-0350.

**SIGNATURE OF APPLICANT, ATTORNEY OR AGENT**

Firm Name	RatnerPrestia		
Signature			
Printed Name	Frank P. Tise		
Date	June 6, 2005	Registration No.	50,379

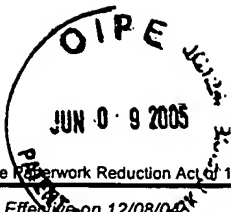
**CERTIFICATE OF TRANSMISSION / MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or Printed Name	Kimberly N. Lape	Date	June 6, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Office, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, ALEXANDRIA, VA 22313-1450.

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Effective on 12/08/04  
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**  
**For FY 2005**☒ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 250.00**Complete if Known**

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**METHOD OF PAYMENT** (check all that apply)☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☐ Deposit Account Deposit Account Number: 18-0350 Deposit Account Name: RatnerPrestia

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee  
☒ Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Small Entity	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fee (\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Small Entity	
Fee (\$)	Fee (\$)
50	25
200	100
360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims
- 20 or HP =	x	=		Fee (\$)

HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	=	

HP = highest number of independent claims paid for, if greater than 3

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief Filing Fee**Fees Paid (\$)****\$250****SUBMITTED BY****Complete (if applicable)**

Signature	<u>Frank P. Tise</u>	Registration No. Attorney/Agent)	50.379	Telephone	(302) 778-2500
Name (Print/Type)	Frank P. Tise			Date	June 6, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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